

IN THE MATTER OF	:	BEFORE THE
<b>JARED MILLER</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-013V

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### **DECISION AND ORDER**

On May 8, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Jared Miller, Petitioner, for a variance to reduce the 10-foot side setback to 4 feet for the construction of a single-family detached dwelling to be located in an R-MH (Residential – Mobile Home) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Michael E. Henderson, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8283 Washington Boulevard, is located in the 6<sup>th</sup> Election District about 400 feet southeast of Washington Boulevard (U.S. Route 1) and 500 feet northeast of Gatewood Drive in Jessup (the "Property"). The Property is identified on Tax Map 43,

Grid 20 as Parcel 506, Lot 4.

The Property is rectangular in shape and consisting of about 4,266 square feet. The lot has about 50 feet of frontage on a 10' wide use-in-common macadam driveway that extends from Washington Boulevard to the south side of the Property. The Property is about 85 feet deep.

The Property is unimproved. A public sewer right-of-way easement, 25 feet wide at the south end and 21 feet wide at the north end of the lot, nearly covers the west half of the Property. The topography of the Property slopes down about 10-12% from south to north.

2. The Petitioner, the owner of the Property, proposes to construct a two-story, 22' wide by 28' deep single-family detached dwelling on the east side of the Property, about 30 feet from the rear lot line and 28 feet from the front lot line. As proposed, the house will be located 4 feet from the east side lot line. The house will therefore encroach 6 feet into the 10-foot side setback required by Section 113.1.D.3.d(4).

3. Immediately adjoining properties are also zoned R-MH. To the north is a large unimproved lot with a wooded stream valley and floodplain. To the east is Lot 5, a triangular shaped lot with a house under construction. To the south is the Brentwood Mobile Home subdivision of manufactured homes. Adjoining to the west is Lot 2, which contains a single-family detached dwelling and is partially zoned CE-CLI. Further west are Lots 1 and 2, which are zoned CE-CLI and contain single-family detached dwellings.

Lots 1, 2, 3 and 5 are larger and wider than the Property. The lots in the Brentwood Mobile Home subdivision are as narrow, but are deeper than the Property. These lots are not encumbered by a public sewer easement. The homes on surrounding properties are larger than

the proposed dwelling.

4. The Petitioner stated that the proposed modular home is the narrowest made by the manufacturer.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is one of the smallest and narrowest in the neighborhood. In addition, because a public sewer occupies nearly half the site, the resulting building envelope is reduced to about 16 feet in width, which is significantly narrower than any other lot in the vicinity. Indeed, even the most modestly sized home would not fit within the current building envelope. The Petitioner’s proposed dwelling is extremely modest in size. In order to construct the house, however, due to the small size and narrowness of the buildable area of the lot, and because the location of the public sewer on the lot, it is necessary to encroach into the side setback. Consequently, I find that the size, narrowness, and location of the public sewer on the Property are unique physical conditions that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed dwelling will be used for permitted residential purposes and will not change the nature or intensity of the use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size, shape, and location of the public sewer on the Property and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed 22' wide dwelling garage is the minimum width feasible and will be located in the only area practical due to the size and narrowness of the building envelope of the Property. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **26<sup>th</sup> day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Jared Miller, Petitioner, for a variance to reduce the 10-foot side setback to 4 feet for the construction of a single-family detached dwelling to be located in an R-MH (Residential – Mobile Home) Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS**  
**HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.